

Protests of)	Date: May 12, 1988
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AHJ TRANSPORTATION, INC.)	
)	
Solicitation Nos. 200-06-88, 200-08-88,)	P.S. Protest Nos.
200-20-88, 010-015-88, and 010-023-88)	88-18 and 88-19

DECISION

AHJ Transportation, Inc. (AHJ) timely protests determinations of two contracting officers that it is an ineligible bidder^{1/} on five solicitations for the transportation of mail. Both determinations were made because AHJ is currently listed as a debarred bidder on the Consolidated List of Debarred, Suspended, and Ineligible Contractors (consolidated list) maintained by the General Services Administration (GSA). Because the issues in each protest are the same, we have consolidated these cases for decision.

The Washington Transportation Management Service Center (TMSC) issued Solicitation No. 200-06-88 on January 14, 1988, Solicitation No. 200-08-88 on February 1, and Solicitation No. 200-20-88 on February 22 for mail transportation service. On each solicitation, AHJ was the apparent low bidder or became low as a result of other lower bidders being declared nonresponsible or withdrawing. AHJ's bids were signed on its behalf by Austin Hatcher, Jr., who was identified in the bids as the president of AHJ. Following the office practice, an employee of the Washington TMSC searched the consolidated list and determined that Austin Hatcher, Jr., was listed as a debarred bidder effective until November, 1988. As a result, the TMSC notified AHJ on March 18 (Solicitation Nos. 200-06-88 and 200-20-88) and on March 20 (Solicitation No. 200-08-88) that the contracting officer determined AHJ to be nonresponsible.

^{1/} The contracting officer at the Washington Transportation Management Service Center declared AHJ nonresponsible, and the contracting officer at the Springfield Transportation Management Service Center declared it ineligible. Pursuant to PCM 1-603, a bidder debarred by the Department of Labor should be found ineligible to bid rather than nonresponsible. The distinction has no bearing on the outcome of this case.

The Springfield TMSO issued Solicitation Nos. 010-015-88 and 010-023-88 on January 27, 1988, for mail transportation service. On each of these solicitations, AHJ's bid, signed for AHJ by Austin Hatcher, Jr., president of the company, was declared low. Following office practice, an employee of the Springfield TMSO searched the consolidated list and also discovered that Austin Hatcher, Jr., was listed as a debarred bidder. Consequently, the Springfield TMSO, on March 15, notified AHJ that the contracting officer had determined AHJ was ineligible to bid.

By letters of counsel, all dated March 24, AHJ protested the findings of ineligibility for all three Washington solicitations, and, by letters dated March 23, AHJ protested the findings of ineligibility for the two Springfield solicitations. In all these protest letters AHJ presents the same argument; that is, that delays by the Department of Labor (DOL) in placing Austin Hatcher, Jr., on the consolidated list have, in effect, unfairly extended Mr. Hatcher's term of debarment.

AHJ admits that the signer of its bids was the same Austin P. Hatcher, Jr., who entered into a consent finding with DOL in October, 1984, agreeing to his being placed on the list of persons ineligible to bid on government contracts pursuant to section 5(a) of the Service Contract Act of 1965, as amended (41 U.S.C. ' 354(a)).

An Administrative Law Judge (ALJ) from DOL accepted the consent finding February 22, 1985. On May 8, the ALJ amended his decision, ordering that Austin P. Hatcher, Jr., be placed on the list of ineligible bidders. In October, 1985, Mr. Hatcher was placed on the list of ineligible bidders distributed by GSA.

AHJ argues that Mr. Hatcher should have been placed on the debarred list sometime between October, 1984, when he signed the consent agreement, and February 22, 1985, when the ALJ issued his first order accepting the agreement. Consequently, the three-year term of ineligibility should have ended by February, 1988, making AHJ eligible for contract award in these solicitations.

In their reports to this office, the contracting officers on the solicitations argued that under DOL regulations DOL has 90 days from the time a debarment decision is issued to notify the Comptroller General to place a party on the list of ineligible contractors. Therefore, following the ALJ's order of May 8, 1985, which clarified that Austin P. Hatcher, Jr., should be placed on the list, the Comptroller General should have been notified no later than August 9, 1985. As a result, Mr. Hatcher could have been ineligible until August, 1988, even if the notice had been transmitted within the period allowed by the regulations. He and AHJ would, therefore, be ineligible for contract award in these solicitations, which were to be awarded in April and May.

AHJ, by an April 6 reply to the contracting officers' statements, argues that Mr. Hatcher had agreed to the consent findings in July, 1984, but they were not

prepared or signed by DOL until October, 1984, that the time between the submission of the consent findings and the entry of the ALJ's February 22, 1985, decision was approximately three months in excess of the time specified for entry of such orders, and that the amended order of May 8, 1985, was required because the ALJ erred. AHJ argues that Mr. Hatcher was not responsible for any of these delays and, consequently, should not bear the burden of continued debarment.

On April 26, 1988, AHJ's counsel attended a conference with a member of this office's staff. At the conference, counsel repeated his arguments that equity required an earlier end to Mr. Hatcher's debarment and that counsel was pursuing appeals at DOL to have Mr. Hatcher's name removed from the debarred list. He requested a delay in these proceedings until he could exhaust his appeals at DOL. This request for delay was denied.^{1/}

The treatment to be accorded firms or individuals and their affiliates in debarred status is governed by PCM 1-603, which provides, in part:

A firm or individual may be listed as debarred, suspended, or ineligible for any of several reasons. The treatment to be accorded a firm or individual listed is as follows:

(1) When a statute, Executive order or controlling regulation of another Government agency prescribes the treatment to be accorded a firm or individual and their affiliates in a debarred, suspended, or ineligible status, the Postal Service will conform to the requirements of such statute, Executive order or regulation.

The Service Contract Act of 1965 (the Act), 41 U.S.C. ' 351, et seq., applicable to the Postal Service pursuant to 39 U.S.C. ' 410(b)(5)(B), prescribes the treatment to be accorded persons or firms found to have violated its provisions. The Act directs the Comptroller General to distribute a list of all persons or firms found to have violated the Act to all agencies. 41 U.S.C. ' 354(a).

Unless the Secretary [of the Department of Labor] otherwise recommends because of unusual circumstances, no contract of the United States shall be awarded to the persons or firms appearing on

^{2/} There is no legal requirement that we delay these proceedings for that purpose nor that the contracting officers delay award pending conclusion of a DOL review of the term of the debarment. See Atchison Engineering Company, Comp. Gen. Dec. B-208148.5, August 30, 1983, 83-2 CPD & 278 Midwest Service and Supply Co. and Midwest Engine Incorporated Comp. Gen. Dec. B-191554, July 13, 1978, 78-2 CPD & 34. In any event, we have received a copy of a May 2, 1988, order of the ALJ denying Mr. Hatcher relief from the ineligibility determination.

this list or to any firm, corporation, partnership, or association in which such persons or firms have a substantial interest until three years have elapsed from the date of publication of the list containing the name of such persons or firms....

Id.

In this case, both TMSCs searched the consolidated list^{1/} distributed to government agencies for Austin Hatcher, Jr.'s, name when the company of which he is president became low bidder on several solicitations. They discovered his name listed as a person found ineligible by DOL for award of government contracts until November, 1988, and notified him that he was either ineligible to bid on the involved Postal Service contracts or, in the case of the Washington TMSC, nonresponsible.^{1/} In these actions, the contracting officers properly followed applicable laws and regulations relating to Service Contract Act debarment as incorporated by Postal Service regulations and declined to award to AHJ. See D/A Capitol, Inc., et al., P.S. Protest Nos. 87-75, 87-77, 87-80, August 28, 1987, footnote 3; PCM 1-603; 41 U.S.C. ' 354(a). Although the protestor argues that it is inequitable for Austin P. Hatcher, Jr., to remain debarred until November, this office is bound, as are the contracting officers, by the clear language of 41 U.S.C. ' 354(a), cited above, and cannot grant AHJ relief.

The protest is denied.

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Office of Contracts and Property Law

[checked against original JLS 2/24/93]

^{3/} The consolidated list circulated by GSA carries the notices from the Comptroller General regarding debarments based on violation of the Service Contract Act.

^{4/} The time for determining the effect of a suspension or debarment on a person's eligibility for award is at the time of award. Since the contracts here were to be awarded in April and May, the contracting officers properly found that AHJ was ineligible because its president, Austin P. Hatcher, Jr., was debarred until November. See Bauer Compressors, Inc., Comp. Gen. Dec. B-213973, April 23, 1984, 84-1 CPD & 458.